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**IN THE HIGH COURT OF JUDICATURE AT BILASPUR,
CHHATTISGARH**

W.P. NO. 1594 /2006

PETITIONER :

Managing Director,
Bharat Aluminum Company
Limited (BALCO),
Balco Nagar, Korba,
District Korba, Chhattisgarh

P.R. No. 1652/06
Presented by Shri. (Bharat Alum. Co. Ltd.)
dated 28/3/06

VERSUS

RESPONDENTS :

1. Controlling Authority
under Payment of Gratuity Act, 1972 O/o.
Assistant Labour Commissioner, Korba,
District Korba, Chhattisgarh
2. Lalit Singh Kanyal, Employment No. (2272),
R/o. 401/31-B, Balco Nagar, Korba, District
Korba, Chhattisgarh
3. Bharat Aluminium Mazdoor Sangh (INTUC),
Through: Its General Secretary, Balco Nagar,
Korba, District Korba, Chhattisgarh
4. State of Chhattisgarh,
Through: The Secretary,
Government of Chhattisgarh,
Department of Labour,
D.K.S. Bhawan, Mantralaya,
Raipur, Chhattisgarh



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**WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF
INDIA**

HIGH COURT OF CHHATTISGARH AT BILASPURW. P. No. 1594 of 2006

Petitioner : Managing Director,
Bharat Aluminum Company Limited
(BALCO)

Versus

Respondents : Controlling Authority under Payment
of Gratuity Act, 1972 O/o. Assistant
Labour Commissioner & others

Post for order on 8th January, 2007

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. No. 1594 of 2006

Petitioner : Managing Director,
Bharat Aluminum Company Limited
(BALCO)

Versus

Respondents : Controlling Authority under Payment
of Gratuity Act, 1972 O/o. Assistant
Labour Commissioner & others

SB: Hon'ble Mr. Justice Satish K. Agnihotri, J

Shri N.S. Kale, Senior counsel with Shri Abhishekh Sinha, counsel for the petitioner.

Shri V.V.S. Moorthy, Deputy Advocate General for the respondents No. 1 to 4.

Dr. N.K. Shukla, Senior counsel with Shri Rajeev Shrivastava, counsel for the respondents No. 2 and 3.

ORDER

(Passed on 8th day of January, 2007)

1. By this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the validity of the impugned order dated 4.3.2006 (P/7) passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act, 1972').
2. The indisputable facts of the case are that the respondent No. 2 is an employee of the petitioner-Company. According to the petitioner,

respondent No.2 was upgraded to the post of Assistant Technical Officer vide order dated 15th July, 2003 (P/1). By the notice dated 15th November, 2005 (P/2), the petitioner was intimated that he would attain the age of superannuation i.e. 58 years on 31st January, 2006. The respondent No. 2/employee thereafter moved an application on 7.1.2006 (P/3) for grant of gratuity.

3. The respondent No. 2/employee further filed a writ petition on 30.1.2006, being W. P. No. 513 of 2006, in this Court seeking a relief to quash the notice/order dated 15.11.2005 and to direct the petitioner herein to retire the petitioner on completion of age of 60 years being a workman. Subsequently, the petition was dismissed as withdrawn by the order dated 31.1.2006 (P/4).
4. The respondent No. 2/employee filed an application (P/6) before the Controlling Authority/respondent No. 1 to cancel his application for payment of gratuity. Thereafter, a complaint was filed by the respondent No. 2 before the Inspector under the provisions of Chhattisgarh Industrial Employment (Standing Orders) Act, 1961 claiming himself to be a workman and that he was retired in violation of the applicable standing orders. The respondent No. 1/Controlling Authority under the Act, 1972 passed the order on 4.3.2006 (P/7) that the letter of superannuation was in violation of Section 4 (1) of the Act, 1972 and the respondent No. 2 would continue till he superannuates at the age of 60 years as per Rule 5 (d) of the

Standing Orders. The petitioner was further directed to encash the cheque submitted by the respondent No. 2 to the petitioner as the payment of gratuity would accrue on the date of superannuation as per Rule 5 (d) of the Standing Orders.

5. Being aggrieved, the petitioner has filed this petition impugning the order dated 4.3.2006 (P/7) passed by the respondent No. 1/Controlling Authority on the following rounds:-

- (i) The impugned order was bad in law as it was wholly without jurisdiction.
- (ii) The respondent No. 1 under the Act, 1972 has no power to adjudicate upon the status of the employee or superannuation of any employee.
- (iii) The respondent No. 1 has further no authority to direct refund of the amount paid towards gratuity and provident fund and the order is contrary to the provisions of the Rule 17 of the Payment of Gratuity (Central) Rules, 1972 (hereinafter referred to as 'the Rules, 1972').

6. Shri N.S. Kale, learned Senior counsel with Shri Abhishekh Sinha, learned counsel appearing for the petitioner would submit, as stated above. Learned counsel would further contend that the impugned order deserves to be set aside on the ground of being passed by the incompetent officer having no jurisdiction to pass such order.
7. Dr. N.K. Shukla, learned Senior counsel with Shri Rajeev Shrivastava learned counsel appearing for the respondent No. 2 and 3 and Shri V.V.S. Murthy, learned Deputy Advocate General appearing for the respondents No. 1 and 4, per contra, would submit that the respondent

No. 1/Controlling Authority has power to grant of payment of gratuity and in the event, the gratuity has been paid wrongly before retirement of an employee, the respondent No. 1 has inherent power to direct refund of the gratuity. Since, the respondent No. 1 has power to decide the payment of gratuity, the ancillary power to decide as to whether an employee has been superannuated correctly or not vest in the authority and the order passed by the authority is competent, legal and valid.

8. Learned counsel appearing for the respondents heavily relied on the decision of the Supreme Court in the case of *State of Punjab Vs. Labour Court, Jullundur and others*¹ and the decision of the Madras High Court in the case of *Management of Pithavadian Vs. Controlling Authority under the Payment of Gratuity Act 1972 Madras and others*². It was further contended that there is an alternative remedy prescribed under Section 7 (7) of the Act, 1972 and without resorting to the remedy under Section 7 (7) of the Act, 1972 of appeal to the State Government, the petitioner has approached this Court.
9. I have heard learned counsel for the parties and perused the pleadings and documents appended thereto. It is well settled that the Payment of Gratuity Act is a self-contained code incorporating all the essential provisions relating to payment of gratuity which can be claimed under the Act, and its provisions impliedly exclude recourse to any other statute for that purpose. In order to appreciate the dispute

raised in this petition, it is necessary to quote relevant provisions of the Act, 1972 and Rule 17 of the Rules, 1972. The relevant provisions are quoted below,

Section 3 of the Act, 1972 reads as under:-

"Section 3. Controlling authority.-The Appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different authorities may be appointed for different areas."

Section 4 of the Act, 1972 reads as under:-

"Section 4. Payment of gratuity.- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

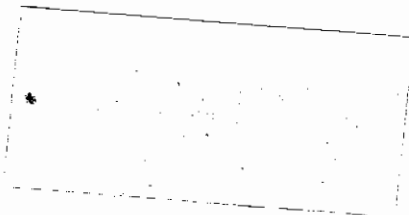
- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:"

(2)	***	***	***
(3)	***	***	***
(4)	***	***	***
(5)	***	***	***
(6)	***	***	***

Section 7 of the Act, 1972 reads as under:-

"Section 7 Determination of the amount of gratuity.- (1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing to act on his behalf shall send a written application to the employer, within such time and in



such form, as may be prescribed, for payment of such gratuity."

(2) *** *** ***
 (3) *** *** ***

(4) (a) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

²[***]

³[(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.]

⁴(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

(5) *** *** ***
 (6) *** *** ***

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied

that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

¹[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.]

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the controlling authority.

Rule 17 of the Rules, 1972 reads as under:-

"Rule 17. Direction for payment of gratuity.- If a finding is recorded under sub-rule (4) of rule 11 that the applicant is entitled to payment of gratuity under the Act, the controlling authority shall issue a notice to the employer concerned in Form 'R' specifying the amount payable and directing payment thereof to the applicant under intimation to the controlling authority within thirty days from the date of the receipt of the notice by the employer. A copy of the notice shall be endorsed to the applicant employee, nominee or legal heir, as the case may be."

10. A bare reading of the provisions stated hereinabove makes it clear that the Controlling Authority is responsible for administration of this Act which provides for payment of gratuity. Section 4 of the Act, 1972 provides as to when an employee is entitled the payment of

gratuity on his superannuation or his retirement or resignation or on his death or disablement due to accident or disease. Section 7 of the Act, 1972 provides for determination of the amount of gratuity to an employee who is eligible for grant of gratuity under the provisions of the Act, 1972. It further provides for resolution of dispute with regard to amount of gratuity payable to an employee under the Act, 1972. Sub-section (7) of Section 7 of the Act, 1972 provides for the appeal with regard to determination of amount of gratuity under sub-section (4) of Section 7 of the Act, 1972 only. If the entire Act is read as a whole, it does not provide for determination of the age of superannuation. The basic dispute as to whether the respondent No. 2 was a workman or not, is not within the scope of jurisdiction of the Controlling Authority under the Act, 1972.

11. The Supreme Court in the case of Punjab Vs. Labour Court, Jullundur and others (supra) held that the payment of gratuity act being a complete code contains detailed provisions covering all the essential features of a scheme for payment of gratuity, it creates the right of payment of gratuity, indicates when the right will accrue, and lays down the principles for quantification of the gratuity. It provides further for recovery of the amount, and contains an especial provision that compound interest at nine per cent per annum will be payable on delayed payment. Further, for the enforcement of its provisions, the Act provides for the appointment of a Controlling

Authority, who is entrusted with the task of administering the Act.

The fulfillment of the rights and obligations of the parties are made his responsibility, and he has been invested with an amplitude of power for the full discharge of that responsibility.

12. The decision of the Madras High Court in the case of *Management of Pithavadian Vs. Controlling Authority under the Payment of Gratuity Act 1972 Madras and others (supra)* is not applicable to the facts of the case. In that case, the main question was applicability of the Payment of Gratuity Act to the Architects and Planners as to the interpretation of Section 1 (3) of the Act, 1972.

13. In view of the above provisions and the observations of the Supreme Court that the Act, 1972 does not provide for adjudication of the dispute with regard to the age of superannuation, particularly, in the facts of the case when according to the employee, the employee is a workman and according to the petitioner, by order dated 15.7.2003, he has been upgraded to the post of Assistant Technical Officer and is not a workman. This dispute can be adjudicated upon under some other provisions, not under this Act.

14. In regard to submission of learned counsel for the respondents that an alternative statutory appeal is provided under the Act, on reading of the provisions of the appeal under sub-section (7) of Section 7 of the Act, 1972, it is clear that the appeal is provided only in respect of determination of the gratuity amount. In the present case, question

involved is as to whether the employee i.e. respondent No. 2 is a workman to be entitled for superannuation on attaining the age of 60 years or a supervisor, whose age of superannuation is 58 years. The refusal to entertain the writ petition on the ground of availability of alternative statutory remedy is discretionary and in the facts and circumstances of the case when the question involved is the competence of the Controlling Authority, I am of the considered opinion that this petition cannot be thrown on the ground of availability of alternative statutory remedy.

15. As a result and for the reasons stated hereinabove, the impugned order dated 4.3.2006 (P/7) is set aside as being passed by the incompetent officer i.e. Controlling Authority. However, without expressing any opinion on the merit of the case as to whether the employee/respondent No. 2 is a workman or not, the respondent No. 2/employee is at liberty to approach an appropriate forum for determination of his status.

16. The writ petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

1. (1980) 1 SCC 4

2. (1984 LAB. I. C. 1298)